

In the Matter of the Appeal of)
)
 ELD METAL COMPANY, INC.)

Appearances:

For Appellant: A. R. Layer, its President; L. B. Pearce,
its Auditor
For Respondent: W. M. Walsh, Assistant Franchise Tax Com-
missioner; Frank M. Keelsing, Franchise
Tax Counsel; Clyde Bondeson, Senior
Franchise Tax Auditor

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Eld Metal Company, Ltd., to his proposed assessment of additional tax in the amount of \$130 for the taxable year ended December 31, 1937, based upon the income of the company for the year ended December 31, 1936.

The Appellant claimed a deduction in its return of income for the year ended December 31, 1936, in the amount of \$9,000 as salary paid to Mr. A. R. Layer, its President. The Commissioner disallowed the deduction of \$4,000 of that sum, allowing only \$5,000 as a deduction for the salary of Mr. Layer, and levied his proposed assessment accordingly. There is herein presented for our consideration the validity of this action of the Commissioner.

The Appellant's business involves the manufacture and sale of alloyed metals. Mr. Layer is a metallurgist, possessing over thirty years of experience in his field. The success of Appellant's operations depends principally upon his knowledge, technical skill and ability in producing metals to perform certain special services. In the course of this work he has developed his own electric furnaces and processes for the manufacture of metals designed for particular industrial uses.

Since Appellant's creation in 1928, Mr. Layer has been paid salaries varying from \$9,600 a year in 1929 to \$2,400 a year in 1935. There can be no doubt but that the salary paid to him during any particular year has depended to some extent upon the profits realized during that year. The Appellant is essentially a family corporation, Mr. Layer owning 1,000 out of 2,250 or 44.44% of its shares of stock in 1936.

Despite these considerations, which, standing alone, might indicate that the amount paid to him as salary in 1936 actually

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represented in part a distribution of profits, we believe that such amount was a reasonable allowance of salary for the services rendered by him and, accordingly, deductible from Appellant's gross income pursuant to Section (a) of the Bank and Corporation Franchise Tax Act.

The services performed by Mr. Layer require a high degree of technical knowledge and skill. Prior to his association with Appellant in 1928, he received compensation from other corporations in which he owned no stock in amounts exceeding \$9,000 a year. The amount paid to him by Appellant in 1936 does not exceed the generally prevailing rate of compensation for comparable services rendered by other individuals possessing similar training and experience. These factors, in our opinion, outweigh the considerations above mentioned and establish the reasonableness of the salary deduction claimed by the Appellant. The action of the Commissioner in overruling the Appellant's protest to the proposed assessment of additional tax is, accordingly, overruled.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Hon. Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of the Eld Metal Company, Inc., to his proposed assessment of additional tax in the amount of \$130 for the taxable year ended December 31, 1937, based upon the income of the company for the year ended December 31, 1936, be and the same is hereby reversed. Said ruling is hereby set aside and the Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California. this 26th day of September, 1939, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary